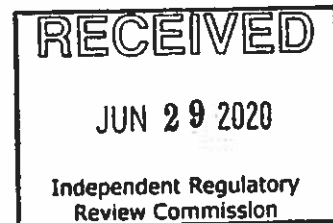


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From: Suter, Kenneth J (OLC)
To: Zappasodi, Brittany; Reichard, Jo (GC)
Subject: Fw: [External] Comments on Proposed Rulemaking
Date: Monday, June 29, 2020 11:34:51 AM
Attachments: Objection Letter.3.docx

From: ST, RegulatoryCounsel <RA-STRegulatoryCounsel@pa.gov>
Sent: Monday, June 29, 2020 11:06 AM
To: Suter, Kenneth J (OLC) <ksuter@pa.gov>
Subject: FW: [External] Comments on Proposed Rulemaking



From: mqd2@aol.com <mqd2@aol.com>
Sent: Friday, June 19, 2020 1:54 PM
To: ST, RegulatoryCounsel <RA-STRegulatoryCounsel@pa.gov>
Cc: kard.web@verizon.net; ebgreenbergdpm@gmail.com; info@hanoverfoot.com; info@qffc.com; Hollinger, Aaron <ahollinger@pa.gov>
Subject: [External] Comments on Proposed Rulemaking

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Kenneth J. Suter, Esq.
Counsel
State Board of Podiatry
2601 N. Third Street
P.O. Box 69523
Harrisburg, PA. 17106-9523

Dear Mr. Suter,

Please find attached the Comments and Objections to the Proposed Rulemaking of the State Board of Podiatry published on May 31, 2020.

Please acknowledge receipt of this e mail Comment. Hard copies will be sent out on Monday June 22.

Please do not hesitate to contact me if you have any questions. please do not hesitate to contact me. As we are still working remotely, my telephone number is 717 503 5744.

Thank you

**Michael Davis
Pennsylvania Podiatric Medical Association
757 Poplar Church Road
Camp Hill, PA 17011
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June 19, 2020

Kenneth J. Suter, Esq.
Counsel
State Board of Podiatry
2601 N. Third Street
P.O. Box 69523
Harrisburg, PA. 17106-9523

Dear Mr. Suter,

I am writing this letter as president of the Pennsylvania Podiatric Medical Association (PPMA). Our Association counts, as its members, over eight hundred and fifty (850) doctors of podiatric medicine, who hold various levels of licenses issued by the Commonwealth's Podiatry Licensing Board.

We have received and reviewed the Proposed Rulemaking published by the State Board of Podiatry on May 30, 2020. A review of the proposed changes was presented to the PPMA House of Delegates which took place on June 13, 2020. The PPMA House is made up of the PPMA Board, as well as officers of the Association's 12 Divisions. Given this structure, the assembled House constitutes the valid "voice" of our membership.

After discussing the proposed changes, the House voted and directed me, as President, to make the objections and comments found below, to this Proposed Rulemaking.

The Board has recommended proposed changes to the following sections of the Board Regulations and our "objection" or "no objection" is indicated per section:

A. Section 29.60 – Definitions.

Certification- Proposed change eliminates previously required program documentation. PPMA has **no objection** to this proposed change.

Distance Learning- A new proposed definition of distance learning. PPMA has **no objection** to this proposed change.

B. Section 29.61 - Requirements for biennial renewal and eligibility to conduct educational conferences.

(a.) This proposed section reduces the required hours for renewal from 50 to 45 clock hours. PPMA **objects to this proposed change, based upon the discussions below.**

(1.) The proposed technical changes to the definition of approved courses. PPMA has **no objection** to this proposed change.

(2.) The proposed change clarifies the relationship of AMA courses to the practice of podiatry. PPMA has **no objection** to this proposed change.

(3.) The proposed change amends the prior section and allows 10 clock hours through reading professional journals. **PPMA objects to this section in that the term journal is not included in the proposed definition of Distance Learning, and there is no inclusive requirement for a method in which the applicant can demonstrate the "completion of a skill" a "knowledge assessment component."**

(4.) The proposed section adds the requirement of "skill completion" and "knowledge assessment" to distance learning courses. PPMA has no objection to this proposed change. **PPMA does object to the proposed unlimited allowance of "clock hours" through distance learning based upon the discussions below.**

(5.) The proposed section contains technical changes to the existing section. PPMA has **no objection** to this proposal change.

(7.) The proposed change is an addition, limiting the circumstances under which program completion can meet the biennial continuing education requirement. PPMA has **no objection** to this proposed change.

(8.) This proposed change makes the licensee responsible for ensuring that the course or program is approved for continuing education credit. PPMA has **no objection** to this proposed change.

(c.) This proposed change requires the inclusion of certifications of completion to the application for license renewal. The PPMA has **no objection** to this proposed change.

(d.) This proposed change subsection contains technical changes to the subsection. PPMA has no objection to this proposed change.

C. Section 29.68 – Continuing education exemptions

(a.) This proposed section contains a requirement of verification of military service. PPMA has no objection to this proposal.

(b.) This proposed section contains technical corrections. PPMA has no objection to this proposed change.

(d.) This is a proposed additional section exempting residents from continuing education requirements. *It is respectfully submitted that residency programs are not approved by the American Podiatry Association (now the American Podiatric Medical Association), but rather the Council on Podiatric Medical Education (CPME). This reference should be amended in the final regulation.*

(e.) This proposed section exempts transferees from other jurisdictions from continuing education requirements in the first renewal period. PPMA has no objection to this proposed change.

OBJECTIONS AND DISCUSSION:

Technical Correction.

Per the review above, the Association has no objections to the majority of the proposed amendments. Through technical and substantive amendments, the majority of proposed changes are appropriate. The single “dated” change is the proposal in Chapter 29.68, (d.) which references the entity that recognizes residencies in the profession of podiatric medicine. That entity is the Council on Podiatric Medical Education (CPME), not the American Podiatry Association. Additionally, the American Podiatry Association is now the American Podiatric Medical Association.

Objections:

There are three proposed changes to which the Association, speaking through its House of Delegates strongly objects.

Section 29.61 (a.) Reduction of Continuing Education (CE) hours from 50 to 45.

History

The first objection is to Section 29.61 (a.). The Association strongly opposes the reduction in continuing education credit hours from 50 to 45. Our objection to lowering the number of

required continuing medical education (CE) hours stems from the fact that Medical Doctors, Doctors of Osteopathy and Doctors of Podiatric Medicine, Midwives and Hospitals are the professions and entities included in the MCARE Fund, through Act 13. Historically, the CE requirement for podiatric physicians was increased to 50 hours per year, from 35 hours per year, through the negotiations which took place with the House, the Senate, the insurance industry representatives, the Hospital Association, the Pennsylvania Medical Society and the Pennsylvania Podiatric Medical Association. These negotiations took place over a number of months, and several hearings. They resulted in the passage of Act 13, MEDICAL CARE AVAILABILITY AND REDUCTION OF ERROR (MCARE) ACT, Act of Mar. 20, 2002, P.L. 154, No. 13.

Prior to these negotiations, and the passage of Act 13, allopathic medicine, governed by the Medical Practice Act and the Osteopathic Medical Practice Act had no requirement for continuing medical education. Our profession, on the other hand, had already had continuing medical education requirements. The negotiations resulted in medical doctors and doctors of osteopathy agreeing to a required 100 hours. Our profession went to 50 hours. Our agreement to increased hours was not included in Act 13, as podiatry already had a requirement in the podiatry licensing act and regulation. Allopathic continuing medical education requirements were established at Section 910 of Act 13.

The reason that the profession of podiatric medicine was so involved in the Act 13 negotiations was that our Association had established, in 1994, a purchasing group for professional liability insurance under the 1986 Risk Retention Act. The advantage of this purchasing group was that we owned the information relating to claims, loss and defense cost for the group participants. That gave our profession a stronger position in the negotiations relating to continuing education.

A reading of Section 910 of Act 13 shows that Section 910 replicates the provisions relating to CE that already existed in the Podiatry Practice Act. The purpose was to apply these requirements to medical and osteopathic doctors. The section, mandating 100 hours of continuing education, addresses the purposes of the continuing education. The section states: *"As part of the 100-hour requirement, the licensure board shall establish a minimum number of hours that must be completed in improving patient safety and risk management subject areas"*.

Podiatry had, for the decade prior to the passage of Act 13, used the claims information in its purchasing group to tailor the CE curriculums to any trends exhibited by claim filings. As our profession had already been so active in this arena, contributing all of this information to the negotiations resulted in the negotiation assigning 50 hours of continuing education to podiatry.

Reducing the number of hours of required continuing education for licensees of the Podiatry Board runs counter to the agreement established by all of the stakeholders in the creation of Act 13.

The reason that this negotiation, and our continuing education, was so important is that podiatric medicine participates in the MCARE Fund. That means that, each year, the amount of

each judgement and settlement reached in all claims against doctors of podiatric medicine, medical doctors, osteopathic medical doctors and hospitals are aggregated and assessed to each licensee in the form of the MCARE Assessment.

That means that assessment paid by the doctor of podiatric medicine, (indexed by the JUA premium rates) rises or falls based on the “aggregated” losses and settlements of the prior year. *So podiatry has an inherent interest in the patient safety and risk management practiced by medical doctors and osteopathic doctors. By the same token, they have an inherent interest in podiatric physicians’ patient safety practices and risk management.*

Reducing the number of continuing education hours runs contrary to this established relationship with other MCARE Fund participants.

Reduction in continuing education hours is not “inspired” by Governor Wolf’s initiative.

The Proposed Rulemaking contains an explanation of *Background and Purpose* in the publication. This “justification” states the following:

“This proposed rulemaking eliminates unnecessary burdens on licensees, while continuing to protect the public’s health, safety and welfare through the continuing education requirements.

Inspired by Governor Tom Wolf’s initiative to reduce barriers to licensure and unnecessary burdens on licensees, this proposed rulemaking will reduce the number of required continuing education credits from 50 hours per biennial renewal to 45 hours. It eliminates the current restriction on the number of hours (currently limited to 10 hours) that may be completed through distance learning courses and programs. This proposed rulemaking allows an unlimited amount of continuing education credits through distance learning, consistent with trends in licensure requirements in other states”.

The proposed reduction of hours appears to be supported by the “average” of the hours required by the regional states of the Northeast Region. (The Knee Center for the Study of Occupational Regulation Study, Page 425) The average of continuing education required by Connecticut, Delaware, Maine, Maryland, Massachusetts, New Hampshire, New Jersey, New York, Ohio, Pennsylvania, Rhode Island, Vermont, West Virginia was 46.58 hours. It is assumed that the Board “rounded” down to 45 hours.

This “study average” of 46.58 hours included Connecticut which requires “0” CE hours, Rhode Island which requires 15 hours per year, Vermont which requires 2 hours biennially and Maine which requires 25 hours biennially. None of these states have a substantial number of podiatric licensees. Using these states is not a valid component of determining an average. If you look at “relevant” state requirements; the average of the continuing education required by surrounding states is above the 46.58 “study average.” Maryland requires 25 CE hours

annually. New Jersey requires 100 hours biennially. Delaware requires 32 hours biennially. New York requires 50 hours triennially. West Virginia requires 50 hours biennially and Ohio requires 100 hours biennially. Adjusted for the license term the average of the surrounding states is 52.55 hours. This relevant group represents a much larger and statistically valid selection of licensed podiatric physicians.

It is respectfully submitted that the relevant comparison for CE hours indicates that the Pennsylvania 50 hour requirement is below the relevant surrounding states. That comports with the other study averages which indicate that Pennsylvania is below the general North East Region in Initial Fees, (North East Region Average: \$419.00 Pennsylvania: \$30.00), Renewal Fees (North East Region Average: \$528.10* Pennsylvania: \$395.00) and Training Requirements (North East Region Average: 1.11 years Pennsylvania: N/A). (The Knee Center for the Study of Occupational Regulation Study , Page 425)

Respectfully, there is no factual basis upon which to reduce the biennial requirement of 50 Continuing Education Hours.

Section 29.61 (a.) (4) Proposed Changes to Face to Face Continuing Education Program Requirements.

Our Association strongly opposes the proposed changes to Section 29.61 (a.) (4.). The proposed section eliminates the current 10 hour limitation on continuing educational hours provided through distance learning.

The proposed section states:

“(4) Clock hours may be obtained by completing approved distance learning courses and programs. Clock hours that are obtained through distance learning courses and programs shall only be eligible for clock hours if successful completion of the distance learning course or program includes completion of a skill or knowledge assessment component.”

This proposed section eliminates the current requirement to obtain only 10 hours of the required 50 hours through internet programs.

While the Association had no objection to the order of the Governor removing limits on distance learning during the COVID 19 Crisis, we oppose making this removal permanent.

The current Section 29.61 provides:

§ 29.61. Requirements for biennial renewal ... At least 30 of the clock hours must be in courses and programs in podiatry that are approved by the Board or the Council on Podiatric Medical Education (CPME). The remaining clock hours must be either in courses and programs in podiatry that are approved by the Board or the CPME or in courses and programs in medical subjects that are approved by the American Medical Association or the American Osteopathic

Association. A maximum of 10 clock hours may be in approved courses and programs that involve the use of the Internet or the reading of professional journals or magazine articles. (emphasis added)

Our objection is based on several factors:

1. Face to Face Program topics, as referenced above in this letter, are often chosen to reflect trends which our insurance program has identified in claims.
2. Attendee scanning goes a long way to insuring that the attendee is exposed to the entire program topic.
3. Speaker evaluation allows the program to judge the effectiveness of the presentation.
4. Attendees interact with each other at face to face programs.
5. Programs allow attendees to be exposed to new techniques and products which address "patient safety and risk management" as required by the Act 13.
6. Attendees can pose questions, discussions can be provoked and the value of the live presentation leads to the legislatively required "completion of a skill" or "knowledge assessment."

While some of these factors can be found in distance learning, there are other factors which reinforce the current limitation on distance learning.

1. The possibility of a licensee repeatedly subscribing to topics in which there is no "completion of a skill" or "knowledge assessment component" that constitutes a challenge to the licensee.
2. The possibility of licensees not maintaining attention throughout the presentation.

There is no question that the quality of the presentation in face to face programs is more effective than the quality of distance learning.

In evaluating the removal of distant learning hour "limits", there is also a "cost component" that should be considered. The average cost of "qualified" distance learning averages \$30 per hour. Face to face programs available to our members average from \$7 to \$8 per hour.

Our Association strongly opposes the proposed change to Section 29.661 (a.)(4.). We propose that the current limitation of (10) hours be inserted in the proposed language so that it would read:

"(4) Ten (10) c[C]lock hours may be obtained by completing approved distance learning courses and programs. Clock hours that are obtained through distance learning courses and programs shall only be eligible for clock hours if successful completion of the distance learning course or program includes completion of a skill or knowledge assessment component".

These arguments were presented to the representatives of our Association at its House of Delegates and were thoroughly discussed. The House vote, at the conclusion of the discussion,

was to maintain the current limitation of 10 hours for distance learning as well as the number of 50 hours for the licensing period.

There were several very important issues which were raised in the House discussion.

First: Podiatry is included in the MCARE Fund and therefore the amount and quality of continuing education is important to maintain.

Second: Our licensees practice in and are employed by Hospitals.

Third: Podiatric physicians enjoy a scope which allows them to practice medicine and surgery to the foot and ankle. Our scope grants an unlimited scope of practice over a limited part of the anatomy and bodily systems. We cannot be perceived to have less stringent continuing education requirements than other medical professions with medical and surgical privileges.

Fourth: The Governor's April order permitted our members to practice outside their scope, in Pennsylvania hospitals, in cooperation with hospitalists in an effort to address the COVID 19 Crisis.

"Podiatrists may perform the following tasks during the emergency: assisting with triage, support, the treating of injuries and wounds, and medical management, not limited to just a patient's legs and feet, but extending to all body parts (to the podiatrist's level of education, training, experience and expertise); performing other tasks lawfully delegated by an M.D. or D.O."

<https://www.dos.pa.gov/ProfessionalLicensing/BoardsCommissions/Podiatry/Documents/Special%20Notices/PODIATRISTS%20scope%20of%20practice%20summary.pdf>

A reduction of our continuing education hours or the quality of our continuing education, in the face of this recognition of our education and training, is not supportable by fact or circumstance. Our training and education promote parity with our allopathic peers. No member of our association would trade that parity for a reduction of hours or a diminution in the quality of our continuing education. *We do not see our current regulatory requirements as a barrier or burden, and we represent the licensees.*

Section 29.61 (a.) (3.) The changes in this section further diminish the quality of our continued education. This proposed change further denigrates the quality of continuing education. There appears to be no inclusion of "professional journals" in the Section 29.60 Definition of Distance Learning. Allowing this proposed section further diminished the quality of our continuing education. Professional Journals have no "...interaction..." or method through which to indicate any enhancement of the Licensee's knowledge or proficiency.

Allowing 10 hours of this undocumented "education" authorizes a detrimental effect on our profession's position in the integrated healthcare system. Allowing this proposed change, along with other proposed changes, would result in the proposed 45 hour CE requirement, to be reduced by 10 hours of non-interactive Journals, further reduced by 2 hours of opioid training,

further reduced by 2 hours of child abuse recognition, means that in any licensing period, there are only 31 verifiable hours of education directly related to our professional scope of practice. *This, in no way, maintains our parity with our professional peers.*

The proposed changes to our continuing education requirements do not comport with the intent of the Governor's order.

The Governor's order addressed the need to "... *cut the red tape, reduce the bureaucracy and ensure overly burdensome rules and fees do not block hardworking people – especially our military spouses – from getting a good job, supporting their families and growing our economy*".

With due respect, the podiatric community is not "burdened" by the current rules or fees. The Governor's study shows that we are under average for the comparative region.

- We are not "over licensed" as referenced in the order.
- Our licensing system does not result in "...increasing costs to consumers;" as referenced in the Order.
- Our entire system is designed to protect the health of the patient consumer.

Diminishing the time and quality of the licensees' continuing education does not benefit the licensee or the consumer patients. (Paragraph 4. Order of the Governor, (<https://www.governor.pa.gov/newsroom/governor-wolf-proposes-job-licensing-reform-cut-red-tape-strengthen-workforce/>))

The Governor's proposals are the result of the final report issued to the Governor. The Governor's proposals eliminate 13 Job Licenses. *The Governor's order or proposal does not include a diminution of the amount or quality of continuing education in the profession of podiatry.* All of the charts in the final report indicate that the podiatric profession has nominal disciplinary and practice issues over the study period (2013-2018).

This system, as currently operating, has produced those study results. We are a health care profession and we need to maintain the amount and quality of the continuing education required of the licensee.

Finally, the majority of this Board's licensees, as represented through the House of Delegates, have objected to the changes as explained herein.

I would appreciate the ability to present our arguments before the Board prior to implementation of the portions of this proposed regulatory become effective.

Respectfully submitted,

/s/ Sabrina Minhas, DPM

Sabria Minhas, DPM
President
Pennsylvania Podiatric Medical Association

Cc:

Governor Tom Wolf
Office of the Governor
508 Main Capitol Building
Harrisburg, PA 17120

Weber, D.P.M., Robert B. (Chairman)
Greenberg, D.P.M., Eric B. (Secretary)
Haluszczak, Melissa A. (Public Member)
McCaughan, D.P.M. Dia D. (Professional Member)
Paris, D.P.M. Michael J., (Vice Chair)

COMPLIANCE STATEMENT

As required by the Regulatory Review Act, Section 71, P..745.5b, it is respectfully submitted that the objections made above indicate that the proposed changes to the time and form of continuing education for podiatric physicians fail to accrue to the public interest.

The required sections of the Regulatory Review Act mandate that: "Upon a finding that the regulation is consistent with the statutory authority of the agency and with the intention of the General Assembly in the enactment of the statute upon which the regulation is based, the commission shall consider the following in determining whether the regulation is in the public interest:"

(1) Economic or fiscal impacts of the regulation, which include the following:

(i) Direct and indirect costs to the Commonwealth, to its political subdivisions and to the private sector. **There are no direct or indirect costs involved in the changes objected to.**

(ii) Adverse effects on prices of goods and services, productivity or competition. **There are no adverse effects on the price of goods or services or competition involved in the changes objected to.**

(iii) The nature of required reports, forms or other paperwork and the estimated cost of their preparation by individuals, businesses and organizations in the public and private sectors. **The proposed changes objected to require no change in paperwork required of a licensee.**

(iv) The nature and estimated cost of legal, consulting or accounting services which the public or private sector may incur. **There is no cost of legal, consulting or accounting service in the proposed changes objected to.**

(v) The impact on the public interest of exempting or setting lesser standards of compliance for individuals or small businesses when it is lawful, desirable and feasible to do so. **Allowing the proposed changes will result in a diminution of the “public interest” represented by amount and quality of continuing education required of a medical professional serving the public.**

(2) The protection of the public health, safety and welfare and the effect on this Commonwealth's natural resources. **Allowing the proposed changes will result in a diminution of the amount and quality of continuing education required of a medical professional serving the public health, safety and welfare.**

(3) The clarity, feasibility and reasonableness of the regulation to be determined by considering the following:

(i) Possible conflict with or duplication of statutes or existing regulations. **None**

(ii) Clarity and lack of ambiguity. **No lack of clarity.**

(iii) Need for the regulation. **There is no need for the change proposed in current regulations relative to the quantity and quality of continuing education required of licensed podiatric physicians.**

(iv) Reasonableness of requirements, implementation procedures and timetables for compliance by the public and private sectors. **There is no basis, contained in the Governor's study, for the proposed changes to the quantity and quality of continuing education required of licensed podiatric physicians.**

(v) Whether acceptable data is the basis of the regulation. **Portions of the data purported to be used as a basis for the proposed change to the quantity and quality of continuing education required of licensed podiatric physicians is flawed in that it is not statistically valid. (see above objection).**

(4) Whether the regulation represents a policy decision of such a substantial nature that it requires legislative review. **The proposed changes to not require legislative review, unless they are implemented.**

(5) Comments, objections or recommendations of a committee. **See above objections.**

(6) Compliance with the provisions of this act or the regulations of the commission in promulgating the regulation. **See above objections.**

(7) Whether the regulation is supported by acceptable data. **One proposed change is supported by flawed data. (See above objection)**

(8) Whether a less costly or less intrusive alternative method of achieving the goal of the regulation has been considered for regulations impacting small business. Cost of the proposed changes objected to are nominal.